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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,869	11/24/2000	Wayne Mariner Kennard	KEN-1	4066

7590 08/18/2004

Wayne M. Kennard
28 Partridge Road
Lexington, MA 02241

EXAMINER

CHAMPAGNE, DONALD

ART UNIT PAPER NUMBER

3622

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/721,869

Applicant(s)

KENNARD, WAYNE MARINER

Examiner

Donald L. Champagne

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 24 May 2004 have been fully considered but they are not persuasive. The arguments are addressed by the following rewritten rejection and expressly at para. 6, 7 and 9 below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as obvious over Anderson et al.
4. Anderson et al. teaches (independent claims 1 and 6) a computer-based method for maximizing redemption award units in an award program ([0026]), comprising the steps of: (a) storing in the storage device (*store 140*) at least one predetermined award unit (para. [0019]); (b) storing in the storage device a shortfall amount (*the number of points needed*, bottom of para. [0027]); (c) each program participant being permitted to accumulate a number of award units earned by performing acts for which predetermined numbers of award units will be awarded, and (d) inputting (*updates the award account*) the number of award units earned in step (c) [0020], said storing being in a *plurality of online accounts* [0005], which reads on (e) storing separately; (f) redeeming an award program award [0026], including the substeps of: (1) retrieving a predetermined award unit level to receive a particular award (*retrieves conditions to receive awards*); (2) retrieving the accumulated award unit total (*point balances*); (3, 4 and 6)¹ determining a number of award units the that the accumulated award unit total is less than the predetermined award unit level (*the number of points needed*, [0027]); (7 and 8) determining the required amount of *AwardPoints*, which reads on a monetary amount (a *generic, convertible currency* (para.

¹ There is no substep "5".

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- [0037] and Merriam-Webster's Online Dictionary), and redeeming the award by paying this monetary amount [0031]. Anderson et al. teaches the "multiplication factor" (substep 7) as a *ratio* used to combine *several types of award points* and convert them to *AwardPoints* (para. [0031], [0053] and [0054]).
5. Anderson et al. does not explicitly teach a shortfall percentage. However, the reference does teach *the number of points needed* [0027], which is the absolute shortfall amount. Because percentages are a common and convenient means for summarizing criteria, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Anderson et al. that the shortfall amount be expressed, stored and displayed as a shortfall percentage.
 6. Applicant argues (p. 3 middle) that the reference does nothing with the shortfall. Revised para. 4 explain in detail what the reference does with the shortfall amount.
 7. Applicant argues (p. 3 bottom) that the reference does not make a selection of a percentage upon which to apply the award program incentive. As noted in para 5 above, the reference does teach a criterion as an absolute shortfall amount expressed in points, not as a shortfall percentage.
 8. Anderson et al. also teaches at the citations given above claims 2-4 and 7-9. The multiplication factor (*ratio*) is the same (claims 2 and 7) when dealing with only one type of point. The multiplication factor is different and weighted (claims 3-4 and 8-9) when dealing with at least two types of points.
 9. Applicant argues (p. 4 top) that the reference does not teach a variety of methods for making up the (mileage) shortfall. That is not correct. The reference teaches that *several types of award points from several loyalty programs may be combined to redeem merchandise*, and that one of these types is the *AwardPoints* monetary unit.
 10. Anderson et al. does not teach (claims 5 and 10) that the multiplication factor is selected based on chance. It was common, at the time of the instant invention, to use chance as a basis for incentive programs, and it is obvious to use common practices. Official notice of this common knowledge or well known in the art statement was taken in the last Office action (Paper No. 3, mailed 24 February 2004, para. 7). This statement is taken to be

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admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (MPEP 2144.03.C.)

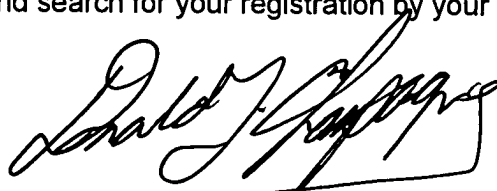
Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
12. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 703-308-3331. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 703-746-5536.
14. The examiner's supervisor, Eric Stamber, can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.
15. **AFTER FINAL PRACTICE** – Consistent with MPEP § 706.07(f) and 713.09, prosecution generally ends with the final rejection. Examiner will grant an interview after final only when applicant presents compelling evidence that “disposal or clarification for appeal may be accomplished with only nominal further consideration” (MPEP § 713.09). The burden is on applicant to demonstrate this requirement, preferably in no more than 25 words. Amendments are entered after final only when the amendments will clearly simplify issues,

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or put the case into condition for allowance, clearly and without additional search or more than nominal consideration.

16. Applicant may have after final arguments considered and amendments entered by filing an RCE.
17. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, www.uspto.gov. At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.



Donald L. Champagne
Primary Examiner
Art Unit 3622

16 August 2004